

Decision 06-08-031 August 24, 2006

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking for the Purpose of
Amending General Order 156.

Rulemaking 06-04-011
(Filed April 13, 2006)

OPINION AMENDING GENERAL ORDER 156

Table of Contents

<u>Title</u>	<u>Page</u>
OPINION AMENDING GENERAL ORDER 156	1
I. Summary	2
II. Background.....	2
III. Procedural Matters	3
IV. Discussion.....	4
A. Existing Program.....	4
B. Rejected Options.....	5
C. Adopted Changes to GO 156.....	6
V. Response to Comments on the OIR	8
A. Joint Utilities – Telco Group	8
B. Greenlining Institute.....	8
C. Joint Utilities – Edison Group.....	9
D. Joint Utilities – San Diego Group.....	10
VI. Request for Specific Proposal.....	11
VII. Development of Resolution	13
VIII. Categorization and Related Matters	14
IX. Comments on Draft Decision.....	14
X. Assignment of Proceeding	15
Findings of Fact.....	15
Conclusions of Law	16
ORDER	17
ATTACHMENT A	

OPINION AMENDING GENERAL ORDER 156

I. Summary

We amend General Order (GO) 156 regarding the process for verifying and determining the eligibility of women, minority, and disabled veteran business enterprises for utility procurement contract opportunities. Under the existing GO, these functions have been administered by the Commission, pursuant to Commission-approved criteria, under a contract with an outside clearinghouse. We amend the GO to allow us to authorize a utility-formed entity or arrangement to operate the clearinghouse. The utilities now covered by GO 156 are requested to submit a specific proposal for creating such an entity or arrangement, which, if acceptable to the Commission, will be authorized by subsequent resolution. If no utility-formed entity or arrangement is created or authorized, the amended GO allows Commission staff to administer the clearinghouse internally.

II. Background

Starting in 1986, the California Legislature enacted a series of statutes to ensure that a fair proportion of total utility contracts and subcontracts for products and services are awarded to women, minority, and disabled veteran business enterprises (WMDVBE). (See generally Pub. Util. Code §§ 8281-8286.) The purposes of these statutes are to (a) encourage greater economic opportunity for WMDVBE; (b) promote competition among regulated public utility suppliers to enhance economic efficiency in the procurement of electrical, gas, and telephone corporations' (and their affiliates') contracts; and (c) clarify and expand the program for the utilities' procurement of products and services from WMDVBE enterprises. (See § 8281(b)(2).)

GO 156, first adopted in 1988, sets forth Commission rules for implementing the statutory requirements set forth in Sections 8281-8286. GO 156 has been amended numerous times over the years, most recently by Decision (D.) 05-12-023 (December 15, 2005). The current version of GO 156, reflecting all amendments through December 15, 2005, is set forth as Attachment A to the Order Instituting Rulemaking (OIR) adopted on April 13, 2006.

Section 3 of GO 156 establishes a clearinghouse “to audit and verify the status of WMBEs [women-owned or minority owned business enterprises], and to establish and maintain a database of WMDVBEs that is accessible to the Commission and to participating utilities.” (Section 3.1, GO 156.) For years, the audit and verification functions have been performed by an outside vendor (Asian, Inc.) under contract with the Commission using guidelines approved by the Commission. Recently, the California Department of General Services (DGS) informed the Commission that Government Code Section 19130 requires that work that state civil servants can perform should not be contracted out and that the WMBE audit and verification functions can be performed by state civil servants.

In issuing the OIR, the Commission reviewed a variety of options and proposed to amend GO 156 to adopt the staff recommendation of having clearinghouse operating expenses be paid by an entity to be created, funded, and administered by certain of the major public utilities operating in California.

III. Procedural Matters

In the OIR, we indicated that we expected the proceeding to be conducted solely through a written record and that our decision on the merits would be based on pleadings timely filed in this docket. We afforded an opportunity for interested persons to become parties to the proceeding and we set forth a

schedule for their opening and reply comments on our proposed amendments to GO 156.

The following persons indicated their intent to become parties to the proceeding, and each of them has filed opening and reply comments that have been duly considered: Greenlining Institute; Joint Utilities – Edison Group (Southern California Edison Company and Sierra Pacific Power Company); Joint Utilities – San Diego Group (San Diego Gas & Electric Company, Southern California Gas Company, Pacific Gas & Electric Company, and Southwest Gas Corporation); and Joint Utilities – Telco Group (Pacific Bell Telephone Company dba AT&T California and Verizon California Inc.).

The OIR did not contemplate a prehearing conference or an evidentiary hearing. After review of the record, we conclude that neither event is necessary. While the OIR did contemplate the issuance of a scoping memo, we also conclude that the OIR sufficiently identified the issues to be addressed in this proceeding and that all other organizational matters are addressed in the OIR or in this decision. By separate ruling, the assigned Administrative Law Judge has afforded parties an opportunity to indicate their intent to claim intervenor compensation for participation in this proceeding.

IV. Discussion

A. Existing Program

Under existing GO 156, the Commission contracts with an outside vendor for the maintenance of a clearinghouse for the sharing of WMDVBE¹

¹ Both WMBE and WMDVBE are used in this order. The clearinghouse that is the subject of this order verifies WMBEs. The DGS verifies disabled veterans' business enterprises. The clearinghouse database lists both types of verified firms (WMDVBES).

identification and verification information. A firm seeking verification as a WMBE completes a verification form and submits it to the clearinghouse vendor. Applying Commission-approved criteria, the vendor verifies that the firm qualifies as a WMBE. Once verified, the firm is included in the clearinghouse database of other WMDVBE firms. Utilities may contract with a verified firm without having to independently verify its WMDVBE status. Firms are required to submit verification forms at least once every three years.

B. Rejected Options

In the OIR, we reviewed other approaches, considered by our staff but rejected, for securing WMBE verifications. (*See* OIR at 5-6.) These approaches and the reasons for their rejection included: (a) relying on Caltrans for verification services (rejected because Caltrans expressed reluctance to perform these services and its verification process may not be expeditious); (b) allowing the utilities to perform their own verifications (rejected because of the anticipated difficulty of maintaining uniform standards); (c) accepting self-certification from a firm itself (rejected because of the inability to maintain uniform standards and the potential for fraud and abuse); (d) accepting verifications issued by other federal, state, and local governmental agencies, as well as specialized verification organizations, so long as the agencies' verification processes substantially conform to the criteria set forth in GO 156 and Code of Federal Regulations (CFR) title 49, part 26 (rejected because of the potential for verification variability; however, time-limited comparable verification is allowed under the existing program and will be continued under today's decision); and (e) having Commission staff perform all verifications (rejected because of the cost and the uncertainty of securing necessary funding to do so; however, our amendments to

GO 156 allow Commission staff to perform the verification and audit function if a utility-formed entity or arrangement is not created or authorized).

C. Adopted Changes to GO 156

Through amendments to Rule 3 of GO 156, the Commission now authorizes a new entity or arrangement, formed by participating Commission-regulated California public utilities, to fund the operating expenses of a clearinghouse for the sharing of WMDVBE identification and verification information pursuant to terms and conditions specified by the Commission. We have modified our earlier proposal to now authorize an “entity or arrangement.” Several commenting parties suggested that the WMBE program could be undertaken by contracts among the participating utilities; this possibility is acknowledged by our use of the term “arrangement.” The verifications and audits will be conducted in accordance with Commission criteria.

This change in GO 156 is advantageous since it maintains the Commission’s direct supervision of the clearinghouse while transferring the cost and daily operational duties to a utility-formed and -financed entity or arrangement.² The Commission will continue to ensure that the program, in all substantive respects, satisfies California law and Commission orders and requirements. This monitoring will include, but is not limited to, periodic reports and evaluations, as well as regular and random audits of the program.

² Utilities benefiting from the clearinghouse now reimburse the Commission for clearinghouse costs pursuant to an existing sharing formula. These modifications to GO 156 only remove the Commission as the intermediary for these financial transactions.

Any business enterprise seeking to participate in any California public utility's WMDVBE program is eligible to seek verification by the clearinghouse. The database of verified WMDVBEs will be provided regularly to the Commission and will be available through the Commission's own web site.

In the event the public utilities do not form an entity or other arrangement to fund and operate the clearinghouse, or the Commission withdraws its authorization of such an entity, the proposed changes to GO 156 allow Commission staff to establish and operate the clearinghouse internally.

The amendments to Section 7 of GO 156 set forth an expedited appeals process to the Commission. This process is fashioned after a process recently adopted for citation appeals set forth in Resolution ALJ-187.³ This process is available for business enterprises contesting clearinghouse verification decisions and for third parties challenging the verification of other business enterprises. The process is available whether the verification and audit function is provided by a Commission-authorized, utility-formed entity or arrangement or by Commission staff. Because these complaints are not against utilities or other regulated entities, the Commission's formal complaint procedures are not available.

These changes require modification of Section 3, "Clearinghouse," and Section 7, "Complaint Process," of GO 156. The amended versions of Sections 3 and 7 are set forth in Attachment A.

³ Procedures for Appeal of Citations Issued to Household Goods Carriers, Charter Party Carriers, and Passenger Stage Corporations (Sept. 22, 2005).

V. Response to Comments on the OIR

Interested persons were invited to comment on our basic proposal to amend GO 156. As previously indicated, we received four sets of opening and reply comments. No commenter opposed the proposed textual changes in GO 156, including the proposed dispute resolution process. We have modified Section 3 to refer to an “entity or other arrangement,” text which better encompasses some of the recommendations made by the commenters. The comments are summarized below.

A. Joint Utilities—Telco Group

The Telco Group makes a straightforward recommendation: The Commission should eliminate the clearinghouse and authorize those utilities, subject to GO 156’s requirements, to use certifications from the National Minority Supplier Development Council (NMSDC) and the Women’s Business Enterprise National Council (WBENC) as acceptable for GO 156 purposes.

While this recommendation has the appeal of simplicity, we conclude that its disadvantages outweigh its merits. We would be required to rely on the verification standards developed by national agencies rather than standards tailored for the California utilities context. We would not have the oversight authority that we now have and intend to continue under the modified program. Our existing program provides free verifications, while individual firms may still choose to decide to pay for additional services provided by national agencies. For these reasons, we do not accept the Telco Group’s recommendation.

B. Greenlining Institute

Greenlining Institute (Greenlining) does not object to a utility-formed entity so long as it is adequately funded and verified, and does not affect the ability of utilities to track their supplier diversity efforts. Greenlining

recommends that separate verification data be developed for small businesses deterred by the time and expense of typical verification programs. A self-certification program should be developed for businesses with less than \$1 million in revenues, but these firms should be subject to random audits.

Because we amend GO 156 only modestly to address the concerns of DGS, we intend and fully expect that the clearinghouse will be adequately funded by a utility-formed entity or arrangement and will continue to provide the professional audit and verification program now underway. Once a resolution is proposed to us to authorize a specific entity or arrangement, we will scrutinize it to ensure that these and other quality concerns are adequately addressed. A small business program, such as Greenlining recommends, is beyond this proceeding's scope.

C. Joint Utilities—Edison Group

The Edison Group endorses the benefits of the existing clearinghouse arrangement (using the existing contractor), including the free verification function that recognizes time-limited verifications by comparable agencies, Commission oversight, a centralized database, and dispute resolution through Commission processes. The Edison Group indicates, "[T]he CPUC clearinghouse has worked well and meets all the requirements set forth in GO 156." The Edison Group is concerned about relying on verifications from different verification agencies that "create an incentive and opportunity for suppliers that do not meet the CPUC's standards to forum shop." Also, other verification agencies may charge utilities for access to their databases.

If the existing arrangement has to be changed, the Edison Group recommends that the Commission continue the existing contract with Asian, Inc., through the contract's expiration in January 2007. At that time, the utilities

would assume the funding and oversight of the clearinghouse, with cost allocations based on proportionate gross revenues that are updated every three years. The participating utilities would enter into a master agreement among themselves and with the contractor. Each participating utility would also have a bilateral contract with the contractor governing that utility's proportionate financial obligation to the contractor.

We agree with the Edison Group's assessment of the success of the existing clearinghouse arrangement and for the reasons these commenters enumerate. As we explain herein, we make only minimal modifications to GO 156 to allow the verification and audit program to continue without disruption. We share the Edison Group's concern about "forum shopping" for less rigorous verification agencies. At the present, we do accept comparable verifications from other agencies, but this is only for a short time and the firm must be verified under our program within three years.

The Edison Group's proposed arrangement and cost allocation recommendations have many meritorious features and will be seriously considered if formally submitted by the utilities in response to this decision. We continue to stress that the general oversight of the audit and verification program must remain with the Commission.

D. Joint Utilities—San Diego Group

The San Diego Group also generally supports the concept of a utility entity to administer the clearinghouse and continuation of Asian, Inc., as the contractor, subject to satisfactory performance. The San Diego Group also supports the allocation of clearinghouse costs to utilities based on California utility gross revenues (readjusted every three years), but that these costs should be automatically recovered in rates. Rather than a master contract arrangement, the

San Diego Group recommends an oversight board with two or three representatives from each industry sector.

In other specific recommendations, the San Diego Group believes that custody and control of the database should be placed with the Commission. Verifications by other “equivalent agencies,” which meet the Commission’s rigorous certification standards, should be recognized.

The San Diego Group’s proposed arrangement also contains positive features that we will carefully review if formally proposed to us. We reiterate that general oversight must remain with us. While other verifying agencies and organizations may provide excellent services, we do believe that unbridled comparable verification will lead to a lack of uniformity and a general weakening in our rigorous standards. Comparable verifications should be allowed for the limited period now allowed.

VI. Request for Specific Proposal

Several public utilities have preliminarily expressed their willingness to create a new entity or arrangement to undertake the funding of the clearinghouse for WMBE verification and audit purposes. Today’s amendments to GO 156 allow the creation of such an entity or arrangement to pay for and operate the WMDVBE clearinghouse.

Much work still needs to be done to create such an entity or arrangement. During the next 45 days, we request some or all of the approximately 30 utilities subject to GO 156 to submit a specific proposal for the creation and anticipated operation of such an entity or arrangement. Based on this submission, our staff will prepare the appropriate resolution for our consideration, as contemplated by the amended version of Section 3.1 of GO 156.

We request one specific proposal from those utilities offering to participate in the creation and operation of an entity or other arrangement (sponsoring utilities). We will more favorably consider a proposal that encourages a seamless transition and minimizes the disruption to the existing GO 156 program. Indeed, we will give due consideration to a proposal by which one utility assumes primary responsibility for the clearinghouse, with financial contributions by other sponsoring utilities.

Among other matters the sponsoring utilities deem appropriate, their proposal should address the following basic issues:

1 – Type of entity or arrangement. While other recommendations will be seriously considered, we prefer a contractual arrangement among the sponsoring utilities and the contractor, as already proposed in some comments.

2 – Contractor arrangement. We agree with several of the commenting parties that the Commission's contract with Asian, Inc. should continue until its expiration in January 2007. The sponsoring utilities should discuss how they will either assume and extend the existing contract or solicit and award a new contract for the period following January 2007. The proposal should provide procedures for the Commission staff to reject the selection of a contractor and to have the contract terminated if the staff's monitoring and evaluation (Item 5, *infra*) concludes that the contractor is performing unsatisfactorily.

3 – Program costs. The proposal must indicate how required payments to the contractor will be made and secured. We believe that the existing method for allocating the contractor's costs should continue, unless such time as the utilities covered by GO 156 agree upon another formula. We can envision the contractor assuming responsibility for billing utilities and acting as the fiduciary for

collected assessments. The cost of these additional financial duties could be added to the contractor's compensation and shared by the covered utilities.

4 – Verification and audit functions. We believe the existing program of verifications and audits works well. The sponsoring utilities should demonstrate how the existing program, based on GO 156, Commission decisions, and the existing contract with Asian, Inc., will continue under the new entity or arrangement.

5 – Monitoring and Evaluation. We are asking our staff to develop criteria and methods appropriate to monitor and evaluate the performance of the new entity or arrangement (including financial audits of revenues and expenditures associated with the program). The sponsoring entities can assist staff in this regard by proposing the criteria and methods they believe would be appropriate.

VII. Development of Resolution

Once the sponsoring utilities have submitted a specific proposal, we direct our staff to develop an appropriate resolution for our consideration setting forth all necessary terms and conditions to effectuate the utility-formed and -financed entity or arrangement, as contemplated by the amended GO. Those terms and conditions must be consistent with GO 156 and the guidance we provide today. Our staff may engage in additional discussion with the sponsoring utilities to resolve uncertainties and to achieve a proposal that is consistent with GO 156 and today's guidance. The proposed resolution should be distributed for comment within 90 days of this decision's effective date.

In the event that the utilities do not propose a new entity or arrangement, or in the event that our staff considers the proposal to be inconsistent with GO 156 or today's guidance, we direct staff to prepare the necessary resolution for the Commission to establish and operate such a clearinghouse internally, as

provided for in Section 3.1 of GO 156. We will consider such an outcome, however, to be a disappointing and significantly less desirable outcome.

We direct staff to give special attention to the methods for ongoing monitoring and evaluation of the new entity or arrangements (including the contractor actually performing services). Staff should consider any criteria and methods proposed by the sponsoring utilities. Appropriate monitoring and evaluation provisions should be set forth in the draft resolution.

VIII. Categorization and Related Matters

This rulemaking is being conducted in accordance with Article 2.5 of the Commission's Rules of Practice and Procedure. We ratify the preliminary determination of this rulemaking proceeding to be quasi-legislative as the term is defined in Rule 5(d). The *ex parte* restrictions for this category of proceeding, previously set forth in the OIR, are confirmed. This proceeding has been conducted solely through a written record as no relevant requests for a hearing have been made and a hearing is unnecessary. Since all procedural issues have been addressed, we waive the requirement of scoping memo.

IX. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. The only comment on the draft decision was filed by Greenlining on August 7, 2006. While supporting the draft decision, Greenlining (as it had done previously, see pages 8-9) urges the Commission to adopt its proposed small business program as part of the modifications to GO 156. This rulemaking's purpose is to modify certain administrative and financial aspects of the clearinghouse operation. Greenlining's proposal addresses the substantive aspects of the GO 156 program, which is beyond our contemplated purpose for

this proceeding. Greenlining may desire to discuss its proposal informally with staff or to present it to the Commission in a petition for rulemaking (see Rule 14.7).

X. Assignment of Proceeding

This proceeding is assigned to Commissioner Michael R. Peevey and to Administrative Law Judge John E. Thorson.

Findings of Fact

1. GO 156 sets forth a procedure for verifying the status of WMBEs and for maintaining a database of WMDVBEs that is accessible to the Commission and to participating utilities.
2. For years, the audit and verification functions have been performed by an outside vendor under contract with the Commission.
3. Recently, the DGS has informed the Commission that Government Code Section 19130 requires that work that state civil servants can perform should not be contracted out and that the WMBE audit and verification functions can be performed by state civil servants.
4. After exploring various options, the Commission proposes to accept WMBE verifications issued by a clearinghouse funded by major Commission-regulated public utilities through a utility-formed entity or arrangement. Commission staff also should be authorized to perform WMBE verification functions if a utility-formed entity or arrangement is not created or authorized.
5. These changes require amendments to GO 156.
6. Some or all of the utilities subject to the provisions of GO 156 should be requested to submit a specific proposal for creating an entity or arrangement to fund clearinghouse performing WMBE verifications and audits. The specific

proposal should address the major considerations set forth in Sections V and VI of this decision.

7. A Commission resolution will be required to authorize a utility-formed and -financed entity or arrangement and to set forth the specific terms and conditions governing its operations.

8. In the event that none of the utilities propose a new entity or arrangement, or in the event that our staff considers the proposal to be inconsistent with GO 156 or today's guidance, our staff should prepare the necessary resolution for the Commission to establish and operate such a clearinghouse internally.

Conclusions of Law

1. GO 156 should be amended as set forth in Attachment A.
2. Pursuant to Section 3.1 of amended GO 156, the Commission must subsequently approve a resolution (a) to actually authorize a utility-formed and -financed entity or arrangement to fund a clearinghouse, or (b) to establish such a clearinghouse within the Commission.

O R D E R

IT IS ORDERED that:

1. General Order (GO) 156 is amended as set forth in Attachment A.
2. Those California public utilities (regulated by the Commission) desiring to form a new entity or arrangement to fund the operating expenses for the clearinghouse for the sharing of women, minority, and disabled veterans business enterprises (WMDVBE) identification and verification information under specific Commission authorization and monitoring shall submit a specific proposal to our staff within 30 days of the effective date of this decision. The proposal should be consistent with GO 156, as amended, and the guidance and responses to comments set forth in this decision.
3. Upon receipt of the utilities' specific proposal, our staff will prepare an appropriate resolution for our consideration setting forth all necessary terms and conditions to effectuate the utility-formed and -financed entity or arrangement, as contemplated by the amended GO. Those terms and conditions must be consistent with GO 156 and the guidance we provide today.
4. In the event that the utilities do not propose a new entity or arrangement, or in the event that our staff considers the proposal to be inconsistent with GO 156 or today's guidance, our staff will prepare the necessary resolution for the Commission to establish and operate such a clearinghouse internally, as provided for in Section 3.1 of GO 156.
5. The proposed resolution will be circulated for comment no later than 90 days after the effective date of this decision.
6. We invite the participation of the California Utility Diversity Council in the remainder of this proceeding and the Council's comments on this Draft Decision and any proposal submitted pursuant to Ordering Paragraph 2.

7. We confirm the categorization of this proceeding as quasi-legislative and the applicable *ex parte* rules, all as set forth in the Order Instituting Rulemaking (OIR).

8. We waive the requirement of a scoping memo, as contemplated by the OIR.

9. Rulemaking 06-04-011 is closed.

This order is effective today.

Dated August 24, 2006, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
DIAN M. GRUENEICH
JOHN A. BOHN
RACHELLE B. CHONG
Commissioners

ATTACHMENT A:
Changes to GO 156
(additions; ~~deletions~~)

3. CLEARINGHOUSE

The Commission shall ~~maintain~~ provide a clearinghouse for the sharing of WMDVBE identification and verification information.

3.1. The Commission may establish and operate such a clearinghouse internally or authorize, by decision or resolution, a utility-formed entity or arrangement to fund the operation of such a clearinghouse. In authorizing a utility-formed entity or arrangement, the Commission will specify sufficient terms and conditions to specify how verifications and audits shall be performed and to ascertain and ensure that the clearinghouse is operated in accordance with this general order, Public Utilities Code sections 8281-8286, and other applicable legal requirements.

3.42. The primary purpose of the clearinghouse shall be to audit and verify the status of WMBEs, and to establish and maintain a database of WMDVBEs that is accessible to the Commission and to participating utilities.

3.23. The clearinghouse auditing and verification program shall preclude the need for an individual utility to audit and verify the status of the WMBEs it does business with.

3.34. The clearinghouse shall distribute renewal verification forms to WMBEs at least once every three years. If the renewal is not completed and returned within a reasonable time, the clearinghouse shall notify the WMBE and utilities that the WMBE will not be listed as a verified WMBE in the shared database until the renewal is completed.

7. COMPLAINT PROCESS

7.1 Complaints relating to this general order shall be filed and appealed only pursuant to ~~PU Code § 1702 and Article 3 of the Commission's rules and procedures~~ the procedure set forth in this section 7.

~~7.1.~~ The Commission will not, however, entertain complaints which do not allege violations of any law, Commission rule, order, or decision, or utility tariff resulting from such Commission action, but which instead involve only general contract-related disputes, such as failure to win a contract award.

7.2. Complaints Concerning WMBE Verification Decisions

All complaints concerning a verification decision of the clearinghouse will be governed by the following procedures.

7.2.1. Business enterprises whose WMBE status has been denied by the clearinghouse, or who have been deverified by the clearinghouse, may appeal the clearinghouse's decision to the Commission after exhausting their remedies under the internal appeal process implemented by the clearinghouse, a copy of which will be provided by the clearinghouse upon request by the affected business enterprise.

7.2.2. Third parties may file complaints challenging the WMBE status of businesses whose WMBE verification is pending, or who have already been verified by the clearinghouse. Such complaints must: 1) be in writing and be addressed to the clearinghouse; 2) set forth with specificity the grounds for the challenge in ordinary and concise language; 3) include the name and address of the complainant; and 4) be served on the affected WMBE. Such complaints may include supporting documentation.

The clearinghouse will review third party complaints to determine whether there appears to be a factual basis for questioning the challenged party's WMBE status. If the clearinghouse determines that there appears to be an insufficient factual basis for the complaint, it shall inform the complainant and affected WMBE of this determination in writing within 20 business days of the receipt of the complaint. The clearinghouse shall inform the complainant of its right to appeal this determination to the Commission.

7.2.3. If the clearinghouse determines that there appears to be a sufficient factual basis for questioning the challenged party's WMBE status, it shall require the challenged party to provide the clearinghouse information sufficient to permit the evaluation of its WMBE status. Following a thorough review and evaluation of the information presented by both parties, and an opportunity for each party to respond to the clearinghouse's proposed resolution of the verification challenge, the clearinghouse shall notify the parties of its final verification decision and of their right to appeal this decision to the Commission.

7.2.4. During the pendency of a third party challenge of a verified WMBE, the presumption that the challenged party is a WMBE will remain in effect.

7.2.5. If a third party complaint does not include the minimum criteria set forth above, or if the third party rescinds its complaint, the clearinghouse may review the complaint to determine whether it merits unilateral consideration by the clearinghouse.

7.3. Commission Review of WMBE Verification Complaints

~~Complaints regarding clearinghouse verification decisions shall comply with Article 3 of the Commission's Rules of Practice and Procedure, except that the clearinghouse, rather than one or more utilities, shall be named as the defendant. When reviewing appeals of clearinghouse verification decisions, the Commission~~

~~shall determine whether there is substantial evidence in the record, when considered as a whole, to support the conclusion reached by the clearinghouse.~~

7.3.1. The complainant, within 20 days after the service of the clearinghouse's final decision on the complaint, may serve a Notice of Appeal on the clearinghouse, indicating the grounds for the appeal. The complainant shall also serve the Chief Administrative Law Judge and the appropriate Commission director. The appeal will not be docketed as a formal proceeding.

7.3.2. The complainant and clearinghouse shall be the only parties to the appeal.

7.3.3. The Chief Administrative Law Judge shall designate an Administrative Law Judge to hear the appeal of the complaint.

7.3.4. Appeals of complaints will be heard in the Commission's San Francisco or Los Angeles courtrooms as scheduled by the assigned Administrative Law Judge.

7.3.5. The Administrative Law Judge shall schedule and notice the appeal for hearing between 10 and 20 days after being assigned to hear the complaint. The Administrative Law Judge may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.

7.3.6. A party may order a transcript of the hearing, but the party shall pay the cost of the transcript in accordance with the Commission's usual procedures.

7.3.7. A party shall be entitled to the services of an interpreter at the Commission's expense upon written request to the assigned Administrative Law Judge no less than three business days prior to the hearing.

7.3.8. A party may be represented at the hearing by an attorney or other representative, but such representation will be at the respondent's sole expense.

7.3.9. At the hearing, the complainant shall open and close. The Administrative Law Judge may, in his or her discretion, alter the order of presentation. Formal rules of evidence do not apply, and all relevant and reliable evidence may be received in the discretion of the Administrative Law Judge.

7.3.10. Ordinarily, the appeal shall be submitted at the close of the hearing. In the Administrative Law Judge's discretion, the record may be kept open for a reasonable period to permit a party to submit additional evidence or argument.

7.3.11. The Administrative Law Judge shall issue an order resolving the appeal no later than 30 days after the appeal is submitted, and the order will be placed on the Commission's first available agenda, consistent with the Commission's applicable rules.

7.3.12. From the date the Notice of Appeal is served to and including the date the Commission's final order is mailed, neither party (or an attorney or agent acting in behalf of a party) shall engage in an ex parte communication with a Commissioner, a Commissioner's advisor, or an Administrative Law Judge except for procedural or scheduling purposes.

(END ATTACHMENT A)